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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Implementation of Sections of the
Cable Television Consumer Protection
and Competition Act of 1992

Rate Regulation

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) MM Docket No. 92-266
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)

COMMENTS IN SUPPORT
OF
PETITION FOR CLARIFICATION
OR, ALTERNATIVELY,
PETITION FOR RECONSIDERATION

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Dated: July 19, 1993

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Tele-Communications, Inc., by its attorneys, hereby
files comments in support of the "Petition for Clarification of
Order of June 15, 1993," filed by Continental Cablevision, Inc.
in this proceeding on June 22, 1993.¹ Alternatively, TCI
petitions the Commission to reconsider the June 15 Order.

TCI concurs with Continental's request that the Federal
Communications Commission preempt state and local notification
requirements that require cable systems to provide their

¹ See "Petition for Clarification of June 15 Order,"
filed by Continental Cablevision, Inc. in this proceeding, dated
June 22, 1993 (the "Continental Petition"). Cablevision
Industries Corporation, Comcast Cable Communications, Inc. and
Cox Cable Communications ("Joint Parties") also filed in support
of Continental's Petition for Clarification. See "Petition in
Support of Petition for Clarification," filed by Cablevision
Industries Corporation, Comcast Cable Communications, Inc. and
Cox Cable Communications in this proceeding, on July 2, 1993
("Joint Parties Filing").

Discussion

On May 6, 1993, the National Cable Television Association ("NCTA") petitioned the FCC for a limited stay of the

21, 1993, until October 1, 1993.⁶ As Continental explains in the Continental Petition, the June 15 Order, however, does not address whether notice requirements are preempted.⁷ TCI here reiterates Continental's request that the FCC expressly order such preemption and set a uniform deadline for any and all rate-related notices. A uniform notice deadline is required as a practical matter if cable operators are to have sufficient time to bring their systems into compliance with the rules.

Both the Commission and cable operators needed additional time to effectuate the myriad changes necessary to bring their systems into compliance with the new cable rate regulations.⁸ The benchmark regulations will compel many operators to re-tier and thus change rates. As the Commission has recognized, the task of reconfiguring programming and pricing will require a massive effort on the part of cable operators. The extension facilitates a more orderly implementation of such

⁶ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Order, MM Docket No. 92-266, FCC 93-304 (released June 15, 1993) ("June 15 Order").

⁷ Continental Petition at 2.

⁸ Small cable operators, in particular, need additional time "to digest the rules and make the necessary adjustments." See Statement of Chairman Quello, Before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, United States House of Representatives, on Reauthorization Request of the FCC Fiscal Years 1994 and 1995, at 9 (June 17, 1993) ("Statement of Chairman Quello").

changes.⁹ In support of the effective date extension, the Commission noted its resource constraints and added that "an additional period of time for implementation of cable service rate regulation will provide franchising authorities and cable operators greater opportunity to ensure a smooth transition to rate regulation."¹⁰ The additional time is necessary, as a practical matter, because a "totally new regulatory regime this sweeping in scope and complex in nature demands to be implemented with as much care and precision as possible for both legal and practical reasons."¹¹

Although the June 15 Order defers the date on which the FCC will accept local franchising authority certifications and cable programming complaints, it fails to address its effect on state and local notification requirements that effectively limit the amount of time operators will have to make appropriate rate changes and other modifications. This oversight should be remedied.

Requirements to give advance notice of impending changes to subscribers or state or local authorities may effectively prevent cable operators from adjusting their systems to bring them in line with the new regulations. Just as many of

⁹ The extension was designed, among other things, to afford cable operators an additional period of time to establish "compliance with rate regulation requirements, including any necessary rate reductions, and to prepare and disseminate subscriber notices." June 15 Order, at ¶ 3.

¹⁰ Id.

¹¹ Statement of Chairman Quello, at 9-10.

Continental's and the Joint Parties' cable systems are subject to 60- or 90-day advance notice requirements,¹² so too are many TCI systems. Numerous TCI franchise agreements require at least 60-day advance notice of rate changes.¹³ Such notice provisions

¹² See Continental Petition at Exhibit I, Joint Parties Filing at 1.

¹³ To illustrate, the following TCI cable systems are required to provide subscribers with 60-day notice of rate changes: Cahokia, Illinois; Carlyle, Illinois; Galesburg, Illinois; Rock Island, Illinois; Unincorporated Kane County, Illinois; Eaton, Indiana; Fairmont, Indiana; Hartford City, Indiana; Upland, Indiana; Buchanan, Michigan; Buchanan TWP, Michigan; Berrien Springs, Michigan; Berrien TWP, Michigan; Bertrand TWP, Michigan; Covert TWP, Michigan; Dalton TWP, Michigan; Eggleston TWP, Michigan; Fremont, Michigan; Milton TWP, Michigan; Niles, Michigan; Niles TWP, Michigan; No. Muskegon, Michigan; Sheridan TWP, Michigan; Sodus TWP, Michigan; Sullivan, TWP, Michigan; Winona, Minnesota; Middletown, Ohio; Waite Hill Village, Ohio; Willmington, Ohio; West Virginia Cable TV Advisory Board for all franchises; Penn Hills Municipality, Pennsylvania; Loyalhanna Township, Pennsylvania; Forward Township, Pennsylvania; Monesson Borough, Pennsylvania; Speers Borough, Pennsylvania; North Charleroi Borough, Pennsylvania; Charleroi Borough, Pennsylvania; Baldwin Borough, Pennsylvania; Baldwin Township, Pennsylvania; Brentwood Borough, Pennsylvania; Castle Shannon Borough, Pennsylvania; South Park Township, Pennsylvania; Whitehall Borough, Pennsylvania; Madison Borough, Pennsylvania; New Alexandria Borough, Pennsylvania; South Huntingdon Township, Pennsylvania; Osborne Borough, Pennsylvania; Sewickley Borough, Pennsylvania; Aleppo Township, Pennsylvania; Bell Acres Borough, Pennsylvania; Edgeworth Borough, Pennsylvania; Liberty Borough, Pennsylvania; Dravosburg Borough, Pennsylvania; Lincoln Borough, Pennsylvania; McKeesport, Pennsylvania; Duquesne, Pennsylvania; Wilmerding Borough, Pennsylvania; Wall Borough, Pennsylvania; Burnham Borough, Pennsylvania; Asylum Township, Pennsylvania; Glendale, Colorado; Wheatridge, Colorado; Cherry Hills Village, Colorado; Grand Island, Nebraska (to retier only); Grand Forks AFB, North Dakota; Greenleaf, Kansas; Linn, Kansas; Ralston, Nebraska; Papillion, Nebraska; Douglas, Nebraska; Omaha, Nebraska; Broken Arrow, Oklahoma; Creek County, Oklahoma; Glenpool, Oklahoma; Jenks, Oklahoma; Sand Springs, Oklahoma; Sapulpa, Oklahoma; Tulsa, Oklahoma; Fort Sill, Oklahoma; Valliant, Oklahoma; Garnett, Kansas; Topeka, Kansas; Salina, Kansas; and Barksdale Air Force Base, Bossier City, Louisiana. In addition, the following cable systems are required to provide

(continued...)

effectively mandate that all decisions regarding rate changes be made before the end of July in order that subscribers are notified 60 days in advance of the October 1 effective date. Several franchise agreements require 90-day advance notice.¹⁴ More striking, some cable systems are subject to franchise provisions that mandate 120-day advance notice of rate changes. These systems, in effect, fall outside the scope of the effective

These consequences were clearly not intended by the FCC, as previously the FCC recognized and remedied this exact problem. This history suggests strongly that the Commission's extension of the effective date of the rate regulations includes an implicit decision that notice requirements are preempted. Accordingly, just as the effective date of the rate regulations has been deferred from June 21 to October 1, so also should the earlier preemption of notice requirements be extended. The Commission should declare that notice requirements inconsistent with the extension grant are preempted and set a uniform notification deadline. In no event should the deadline be more than 30 days prior to the effective date of the rate regulations. As Continental illustrates, a 30-day notice requirement is reflected in FCC regulations regarding rate-related notices.¹⁶

The requested preemptive action is well within the Commission's scope of authority. Indeed, such preemption is "necessary to achieve [the Commission's] purpose of prompt effectuation of [its] regulatory scheme implementing the Cable

¹⁵(...continued)
rate changes would have had to have been announced by July 1, giving cable operators, as a practical matter, only two weeks from the release of the June 15 Order to make realignment decisions. For example, the franchise agreements in the following jurisdictions mandate at least 90-day notice: St. Joseph TWP, Michigan; Lincoln TWP, Michigan; Royalton TWP, Michigan; and Shoreham TWP, Michigan.

¹⁶ See Continental Petition at 2-3, citing 47 C.F.R §§ 76.933, 76.964, and 76.932.

Act."¹⁷ As Chairman Quello acknowledged, the public interest is not served by "a chaotic rush to regulatory judgement."¹⁸ The chaos can be deferred if all notice requirements are preempted

Conclusion

TCI respectfully requests that the Commission clarify its position regarding notice requirements by preempting all notice requirements and establishing a uniform notice deadline for all rate-related matters. Without such preemptive action, it will be impossible for cable operators both to comply with many of their local notice requirements and to coordinate implementation of the new cable rate regulations.

Respectfully submitted,
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